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File No. D. Essen. Commodities 49

Legal Deptt.

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Subject:— Opinions under the Bombay Essential Commodities and Cattle Control Act, 1946

2-15/2

File No. D. Essen. Commodities

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R.I. No.18-5-1949.

Submitted.

It appears on Messrs. Shree Laxmi Oil Mill, Dhulia making a stock declaration of 18 tons release orders for 18 tons of ground nut cake were issued by A.R.D. in favour of the Collector and Chairman, D.R.D.Board, West Khandesh but the millers gave delivery of 9 tons only and reported that they could not give delivery of the remaining quantity of cake on account of shortage in the stock due to storage over a year. The Collector of West Khandesh states that the shortage of 9 tons has occured in the entire production of 89 tons during the year and ground nut cake decreased in weight when it became dry but since the proprietors of the Mill have failed to submit a full and correct statement of the stock as required by A.R.D. notification No. 99-G(e) dated the 16th July 1947, they may be prosecuted. The R.L.A. is requested to advise.

2. A.R.D. has not forwarded the stock declaration made by the Shree Laxmi Oil Mill, Dhulia, with the papers. If, as stated by that Department the authorities of the Mill have made a false declaration they would be contravening the provisions of clause (e) of sub-section (2) of section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, (Bom. XXII of 1946) and would be punishable under section 10 of the Act, It is stated by the Collector in his letter, at p. 9 ante, that the shortage in ground-nut cake would not exceed 5 percent during a year

In the present case, the shortage is 9 tons out of the entire production 89 tons, i.e. ten percent of the stock. The explanation of the ~~xxxxxxxx~~ authorities of the Mill is that the weekly reports of cake were forwarded without actually weighing ~~xxx~~ them for over a year and the shortage was noticed only recently.

The offence being more or less technical and the shortage being small the Court is ~~xxxxx~~ likely to take a lenient view of the breach. In the circumstances A.R.D. may consider whether it is worth-while prosecuting the authorities of the Mill.

Id/-
16/6.

D.S. (cr.)

The question referred to the R.L.A. is whether the proprietors of Shree Laxmi Oil Mill, Dhulia, could be prosecuted for their failure to submit a full and correct statement, in the prescribed form as per A.& R.D.D. Notification No.99-C(e) dated the 18th July 1947, of the stocks of ground nut cakes held by them. The A.& R.D.D. Notification in this connection is at p-35. The defence of the Mill is that the entire production of the year was 89 tons and that the shorage of 9 tons might be due to the decrease in weight of the oil-cakes as they became dry in course of time, and that, whenn the weekly reports were submitted, the oil cakes were not actually weighed. It is, therefore, obvious that a technical breach of the A.& R.D.D. Notification in question was made by the

proprietors of the Mill for which they are liable to prosecuted. However, as the shortage in part at any rate can be accounted for, it is for the consideration of Govt. whether prosecution for this shortage should be filed.

R.L.A.

Id 14/6

Office of the R. L. A.

Prosecution for false declaration Bom. Essential Commodities and Cattle (Control) Act, 1946.

Section 4(2)(e).

Although in this case there is a technical breach of the A. & R.D.D. notification No. 99-G(e), dated the 18th July 1947, in view of the circumstances reported by the District Superintendent of Police and the Collector of West Khandesh, a porsecution would not be expedient.

Is/-
10/6
Remembrancer of Legal Affairs.

U.R. to A. & R.D.D., No. 6792 , dated the
20th June 1949.

Legal Department.

Under paragraph 5 of the Baroda State (Application of Laws) Order, 1949, the Bombay Essential Commodities and Cattle (Control) Act, 1946 and all notifications issued under the Act and in force in the Province of Bombay immediately before the commencement of the Baroda Order shall apply to the Baroda State with effect from the date on which the Baroda Order comes into force. The Order has come into force on 30th July 1949 and therefore the notification mentioned in the F.D. note at page 23 ante which are presumably in force in the Bombay Province, will apply to the Baroda State with effect from that date.

Sd/-
1/8
Additional Secretary to Government.

U.R. to F.D. No. 8867 dated 2nd August 1949.

Office of the R. L. A.

It is feasible to prosecute Mukund Gopal Patankar, who actually made the sale for contravention of A. & R.D.D., Order No. 1683-G, dated the 5th December 1947 read with Order No.99-G(b), dated the 10th February 1948, punishable under section 10 of the Bombay Essential Commodities and Cattle (Control) Act, 1946. The proprietors of the Mill Mr. K.S. Reddy and Dr. G.K. Patankar in particular may be prosecuted for abetment of this contravention punishable under section 11 of the Act. The proprietors can also be prosecuted for breach of A. & R.D.D. Order No.99-G(b), dated the 25th June 1949.

Sd/-

1/8.

Remembrancer of Legal Affairs.

U.R. to A & F.D. No. 487-Confl., dated the 2nd August 1949.

Office of the E. L. A.

Reading A.R.D.D.Order No.99-G(b) dated 25-6-1948 it will be clear that what the order contemplates is that the person in charge of an Oil Mill shall maintain books of accounts "relating thm to the stock of ground-nut oil cakes held by him." The proprietors of this Mill have no doubt maintained accounts. We have before us an extract from their Accounts book relating to 28th December 1948. Now, if from those accounts the Proprietors can point out the stock which they held of the ground-nut oil cakes everyday, (because the transactions are recorded every day in those account books) there should be nothing wrong with those accounts. But from the statement made by one of the proprietors Mr. Patankar (page 35) it is clear that he cannot say from those accounts how much ground-nut cake was disposed of by him every day, or on any particular day. What he states is that Oil cakes including ground-nit oil cakes and other oil-cakes as also oil have been dealt with as one item in his accounts. As an instance we have the last ofedit item on 28-12-48 which is to this effect. "Rs. 37-8-0 credited to oil-cake Khata mamnds 17½" (p.37). That is exactly what the A.R.D.D. Order No.99-G(b) dated the 25th June 1948 does not permit. Here it may be noted that it is only in respect of ground-nut cake that Government have passed this Order under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946. There is no particular form prescribed for maintaining the accounts, but the dutyrests on the Miller to show the stocks of the ground-nut cake held by him from the accounts maintained by him. It is feasible to prosecute the proprietors of this Mill for breach of A.R.D.D. Order No.99-G(b) dated 25th June 1948.

Turning to A.R.D.D. Order No.1628-C dated 5th December 1947, the relevant wording is, ".... Every perso in charge of a Mill shall sell to the Secretary to Govern ment, Agricultural and Rural Development Department, stocks of ground-nut cakes held by him....". Reading this Order, unaided by any other Order, one may be inclined to the view that as the Order doesnot specifically state thatground-nut oil cake shall not be sold to anybody except the Secretary to Government, the sale of ground-nut oil cake to private persons may not amount to a contravention of this Order. But then there is Government Order No.99-C(b) made on 10th February 1948, passed about 2 months subsequently, which prohibited sale of Ground-nut oil cake except under and in accordance with a permit from Secretary A.R.D.Deptt. Reading these two Orders together, it would be clear that while the Order of 5th December 1947 made it obligatory on the part o-f the Miller to sell the stocks of ground-nut oil cakes held by him to the Secretary to Government, Agriculture and Rural Development Department, Order of 10-2-1948 prohibited the sale of any portion of the stock of the groundnut cakes in any manner to anybody except and in accordance with the conditions of a permit granted by the Secretary, Agriculture and Rural Defelopment Department. Before these Orders came intoforce there was Order of 18-7-1947 (slip)E) amended by Order of 21-8-1947 (slip D) under which no miller could remove or dispose of ground-nut cake held by him at any place in excess of 25 maunds except under and in accordance with the conditions of a permit grated by the Secretary, A.R.D.Department. The result was that on and from 10-2-1948 a Miller could sell ground-nut oil cake only

to the Secretary A.R.D.D. and to none else.

Going into the evidence collected in this case, there should be no difficulty in proving that the Millers had, at the premises of the Mill, sold two bags of ground-nut oil cake to one Pandurang Surve on 28th December 1948. The purchaser is not able to state whether it was at the rate of Rs. 3-8-0 per maund that he had ~~xxx~~ purchased the two bags, but that point is an immaterial. What need be proved, and what I believe can easily be proved, in this case is that from the stock held by the proprietors of this Mills the sale of ground-nut oil cake had taken place on 28-12-48. There is no other Mill where ground-nut oil cakes could be expiled by power in this case.

Under the circumstances, it is feasible to prosecute Mukund Gopal Patankar, who actually made the sale for contravention of A.R.D.D. order ~~xxxx

4-1-1948. It should be noted that under A.R.D.D. order No.99-G(b) of 18-7-1947 no person in charge of a Mill holding stock of ground-nut oil cake in excess of 25 maunds, w-hether on his own account or in partnership with any person (as was the case here) could remove the stock fromthe place where it was stocked or disposed of that stock or even a protion thereof except under in accordance with a permit granted by the Secretary, A.R.D.D.

Id/-

for Remembrancer of Legal Affairs.

U.R. to A.R.D.D.No. 503-Confl. , dated the

6th August 1949.